



# Southwest Network for Environmental and Economic Justice

P.O. Box 7399 • Albuquerque, New Mexico 87194 • (505) 242-0416 • FAX (505) 242-5609

August 23, 2000

Carol Browner, Administrator  
U.S. Environmental Protection Agency  
401 M St.  
Washington, D.C. 20460

Dear Ms. Browner:

We are writing on behalf of the Southwest Network for Environmental and Economic Justice regarding the Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits.

We had many reservations about the initial guidance, so our staff and numerous affiliate members spent many long hours reviewing documents, preparing comments and participating in meetings with the goal of strengthening the policy document. We are very displeased with the revised guidance so much that we are of the opinion that the guidance should be abandoned all together.

The guidance fails to incorporate any substantive recommendation made by the Southwest Network and other environmental justice groups. Suggestions pertaining to the policy for accepting complaints, the rights complainants have in the review process, the method for determining disparate impact, and the mannner for determining the facilities, stressors and impacts to be considered were completely ignored. In addition, EPA did not address our request that a broader policy that covers enforcement, clean-up and other relevant issues be developed. We are attaching the Southwest Network's October 16, 1998 list of comments to the Title VI Interim Guidance in the hopes that EPA will incorporate them into the revised policy.

Not only is the revised guidance unresponsive to the concerns raised by the environmental justice community, but it also introduces many new provisions that place Title VI complainants at an even greater disadvantage. The rights of complainants have been eroded to the extent that they cannot possibly participate meaningfully in decisions related to informal resolution, area specific agreements, adverse impact analysis and justification. Furthermore, statements that "one facility will likely not be the sole source of disparate impact" and that "economic benefit may be a justification for disparate impact" send a clear message that EPA has no intention of every ruling against a recipient of federal assistance.

## **Staff**

Richard Moore,  
Executive Director  
Rosa Cruz-Samudio  
Joaquin Lujan  
Omar Osiris  
Ebony Madyun  
Bianca Encinias

## **Coordinating Council Representatives**

### **Arizona:**

Teresa Leal  
Nogales

### **California:**

Rosa Acosta  
Richmond  
Gordon Mar  
San Francisco

### **New Mexico:**

Daniel Fuentes  
Sunland Park

### **Texas:**

Viola Casares  
San Antonio  
Rev. R. T. Conley  
Dallas

### **Youth:**

Carmela Cordero  
Coahuila, MX

### **Native American**

#### **Representatives:**

Carletta Tilousi  
Havasupai Tribe  
José Matus  
Yaqui Tribe

### **Mexico:**

Elizabeth Robles  
Coahuila  
Carmen Valadez  
Baja California

We have nothing positive to say about this process. We feel that the environmental justice community has been treated with the utmost disrespect. We will not further participate in this process and will have to think long and hard before allowing the EPA to deplete our very scarce financial and human resources in this manner again.

Sincerely,

A handwritten signature in black ink, appearing to read "Rich Moore", with a stylized, wavy line extending from the end of the name.

Richard Moore  
Executive Director

# Southwest Network for Environmental and Economic Justice

P.O. Box 7399 • Albuquerque, New Mexico 87194 • (505) 242-0416 • FAX (505) 242-5609

October 15, 1998

## Staff

Richard Moore, Coordinator  
Sylvia Ladema  
Irene Hernandez  
Neri Holguin  
Rosa Sarmiento

## Coordinating Council

### Representatives

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Teresa Leal  
Nogales

#### California:

Rosa Acosta  
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San Francisco

#### New Mexico:

Daniel Fuentes  
Sunland Park

#### Texas:

Viola Casas  
San Antonio  
Rev. R.T. Conley  
Dallas

#### Yukon:

Carmela Cordero  
Cochulla, MX  
Jonathan White  
Dallas, TX

#### Native American

##### Representatives:

Carlota Tilousi  
Havasupai Tribe  
Manny Piao  
Acorn Pueblo Tribe

#### Mexico:

Elizabeth Robles  
Cochulla  
Carmen Valdez  
Baja California  
Miguel Calunga  
Chihuahua

Carol Browner, Administrator  
U.S. EPA  
401 M. Street SW  
Washington, DC 20460  
FAX (202) 260-4852

Dear Ms. Browner:

We are writing on behalf of the Southwest Network for Environmental and Economic Justice regarding the Title VI Interim Guidance.

The Southwest Network comprises over seventy (70) grassroots, community based, student, native, and labor organizations throughout the Southwest and Western US and border states of Mexico, formed to address environmental degradation and other social, racial, and economic injustices that threaten our communities.

As many studies have shown and as our personal realities reveal, people of color and indigenous communities are often disproportionately impacted by environmental hazards. These situations have come about through the development of unjust land use and economic development policies as well as through the unjust application and enforcement of environmental laws.

Discriminatory policies and practices have given rise to the movement for environmental justice which to date has seen many significant victories at the national level, including the passage of the Executive Order on Environmental Justice and the creation of the National Environmental Justice Advisory Council, as well as at the local level, including the recent defeat of the proposed Shintech Plant near Convent, Louisiana.

However, in almost 50 other cases nation-wide, community leaders have filed complaints under Title VI of the Civil Rights Act to confront environmental injustice in their communities with no fruition. Because of EPA's slow processing of these complaints, several pending complaints still remain unresolved, leaving those communities in the pitfalls of insidious industrial development. We feel that implementation of a policy that would process Title VI complaints in a more accelerated and effective manner would provide a more suitable mechanism for protection in our communities.

Furthermore, towards the development of a more equitable implementation process, we feel that the voices from those communities most affected are fundamental. In view of this, we express our utmost concern about current community input and how it is being incorporated into the development of the guidance policy. Several Southwest Network affiliates have given testimony, expressed concerns, and made comments and recommendations on the guidance at the last two Title VI Advisory Committee meetings. How are these recommendations being included in the guidance policy?

*Building Power Without Borders - In the Spirit of Our People*

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The following are the Southwest Network's comments and recommendations on the Title VI Interim Guidance and on the Findings of the Title VI Implementation Advisory Committee for your consideration.

Regarding the Title VI Interim Guidance, EPA Should:

- ① Develop a guidance policy for complaints outside the permitting context (for example, enforcement, clean-up, etc.), since the Guidance only covers issues involving permitting.
- ① Adopt a more flexible definition of "final agency action" for beginning the statute of limitations.
- ① Bar permits from taking effect while a Title VI complaint is pending. EPA must ensure that a facility is not constructed between the time a complaint is filed and a final determination is made.
- ① Include the complainant and affected community in the investigation and processing of the complaint as well as in the development of any mitigation measures. The Guidance should clearly set out the complainant and the affected community's role in the process.
  - Require states to compile relevant demographic information on permits or provide demographic analyses of their entire permitting programs as part of their Title VI obligations.
  - Take no action on pending complaints until the flaws in the interim guidance are addressed and a final guidance is issued.
  - Recognize that "exposure to pollutants" constitutes an impact which can be acted upon under Title VI of the Civil Rights Act (in other words, the risk of an adverse health effect and not just an actual health effect should be considered an impact).
  - Resolve complaints within the time limits specified in the Guidance once it has been finalized.
  - Specify which analytic methods are to be used for resolving Title VI complaints or work with complainants and the affected community to choose the analytic method to be used.
  - Apply the Guidance to all of EPA, not just the Office of Civil Rights.
- ① Remove from the Guidance the language "relevant under permitting program" which may be used to limit the facilities considered when determining whether there is disparate impact.
- ① Eliminate the requirement that complainants (or EPA) have to examine the entire universe of facilities permitted by an agency to prove a prima facie (on its face) case of disparate impact. In addition to placing a heavy burden on the complainant (or EPA), it mischaracterizes this approach as the only way of proving disparate impact.
  - Provide technical assistance grants for groups filing Title VI complaints so that they may hire demographers, statisticians and technical experts.
- ① Revise the Guidance in order to incorporate the many suggestions provided by community groups and environmental justice advocates.
  - Define the process by which the Guidance will be updated and specify what additional opportunities for comment the public will have.
- ① Eliminate the requirement that a Title VI complaint be refused if it is filed before the decision to grant the permit or other authorization is made. A complaint filed before a permit is granted should trigger some sort of environmental justice analysis to be completed before the permit is granted. If the

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Comisión de Acción Revolucionaria de Latinos Organizados Para Siempre: CARLOS (CA)  
 Comité Organización de Padres de Aztlán (AZ)  
 Committee for Environmental Justice Action: CEJA (TX)  
 Communities at Risk Project of CRLA: CARP (CA)  
 Concerned Citizens of South Central Los Angeles (CA)  
 Concerned Citizens of Sunland Park (NM)  
 Cultural Liberation Coalition: CLC (CA)  
 Denver Neighbors for a Toxic Free Community (CO)  
 El Pueblo Para Aire Y Agua Limpia (CA)  
 Environmental Health Coalition: EHC (CA)  
 Escuela de la Raza Unida (CA)  
 Fuerza Unida (TX)  
 Hondo Empowerment Committee: HEC (TX)  
 Guardians of the Grand Canyon, Havasupai Tribe (AZ)  
 Korean Immigrant Workers Advocates: KIWA (CA)  
 La Sierra Foundation (CO)  
 Labor/Community Strategy Center (CA)  
 Laguna-Acoma Coalition for a Safe Environment (NM)  
 Madres del Este de Los Angeles - Santa Isabel: MELA-SI (CA)  
 Movimiento Estudiantil Chicanos de Aztlán, University of New Mexico: MEChA-UNM (NM)  
 New Start for a Better Environment (TX)  
 Nindakin - People of Color for Environmental Justice (CA)  
 Organización en California de Líderes Campesinas (CA)  
 Padres Hacia Una Vida Mejor (CA)  
 People Organized in Defense of Earth and her Resources: PODER (TX)  
 People Organizing to Demand Environmental Rights: PODER! (CA)  
 People United for a Better Oakland: PUEBLO (CA)  
 Petroglyph Monument Protection Coalition (NM)  
 Pilipino Workers Center (CA)  
 San Antonio Coalition for Environmental & Economic Justice: CEJA (TX)  
 San Francisco Bay Advocates for Environmental Rights: SAFER! (CA)  
 SouthWest Organizing Project: SWOP (NM)  
 Southwest Public Workers Union: SPWU (TX)  
 Tonatiesta Community Development Institute (AZ)  
 Tucsonians for a Clean Environment: TCE (AZ)  
 Ujima Security Council (CA)  
 Union de Trabajadores Agrícolas Fronterizos: UTAF (TX)  
 Union Sin Fronteras (CA)  
 West County Toxics Coalition: WCTC (CA)  
 Yeunani (CA)

cc: Angela Chung, Assistant to the Administrator on EJ  
 USEPA, Office of the Administrator

Ann E. Goode, Director  
 USEPA, Office of Civil Rights

Bob Knox, Acting Director  
 USEPA, Office of Environmental Justice

Felicia Marcus, Administrator  
 USEPA, Region 9

Greg Cooke, Regional Administrator  
 USEPA, Region 6

Elliot Laws, Chair  
 Title VI Implementation Advisory Committee

Haywood Turrentlino, Chair  
 National Environmental Justice Advisory Committee

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decision that is anticipated in the complaint is ultimately made, EPA should begin processing the complaint and not require that the complaint be resubmitted.

- Prepare a citizen's guide which explains the procedures for filing Title VI complaints.
- Specify who will administer particular types of federal funds if funding is revoked as a result of a Title VI complaint. There is a concern that our communities will suffer if funds such as CDBG are revoked.

**Regarding Title VI Implementation Advisory Committee Findings, EPA Should:**

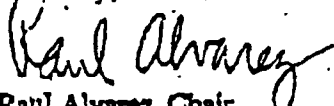
- Provide grassroots environmental justice organizations that have not been able to participate on the committee or attend committee meetings an opportunity to comment on the findings of the committee before a final report is issued. Grassroots organizations do not have the resources that industry and states have to participate in processes such as this and should be given an opportunity to voice their opinions regarding these issues.
- Please provide the Southwest Network with a copy of the Draft Findings of the Title VI Implementation Advisory Committee so that we may comment on them before a final report is issued.

Lastly, the Southwest Network Indigenous affiliates have had several discussions where concerns have been expressed regarding the legal issues and issues of sovereignty associated with the applicability of Title VI to Tribes and Indigenous people. We recommend that grassroots Indigenous organizations and Tribes be included in any discussions initiated by EPA to craft a consultation process on Title VI's applicability to Tribes.

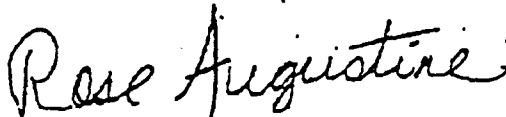
In conclusion, we ask that you please forward these comments to the Title VI Implementation Advisory Committee and inform us as to how these comments will be included in the guidance policy.

Thank you for your anticipated consideration. We look forward to hearing from you within the next two weeks. If you have any questions concerning this matter or would like more information concerning our issues, please do not hesitate to call our regional office at (505) 242-0416.

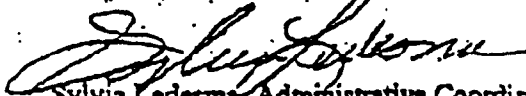
Sincerely,



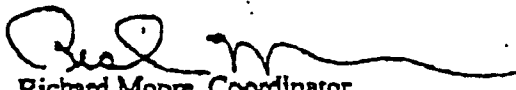
Raul Alvarez, Chair  
EPA Accountability Campaign



Rose Augustine, Chair  
EPA Accountability Campaign



Sylvia Ledesma, Administrative Coordinator  
SW Network Regional Office



Richard Moore, Coordinator  
SW Network Regional Office

**Southwest Network U.S. affiliate and associate organizations signees:**

Action for Grassroots Empowerment & Neighborhood Development Alternatives: AGENDA (CA)  
Alianza Indígena Sin Fronteras (AZ)  
Asian Immigrant Women Advocates: AIWA (CA)  
California Indians for Cultural & Environmental Protection: CICEP (CA)  
Casa de Colores Resource Center (TX)  
Chinese Progressive Association: CPA (CA)  
Citizens for Improved Community-Police Relations: CICPD (AZ)  
Colorado River Native Nations Alliance (CA)  
Comadres (AZ)